

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Christian Television Network, Inc.)	
)	CSR-6095-M
v.)	
)	
Tele-Media Company of Southwest Kentucky)	
)	
Tele-Media of Franklin)	
)	
Request for Mandatory Carriage of)	
Television Station WHTN-TV,)	
Murfreesboro, Tennessee)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2003

Released: May 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Christian Television Network, Inc. (“Christian TV”), licensee of television broadcast station WHTN-TV, Murfreesboro, Tennessee (“WHTN” or the “Station”) filed the above-captioned must carry complaint against Tele-Media Company of Southwest Kentucky and Tele-Media of Franklin (“Tele-Media”), for failing to carry WHTN on its cable television systems serving the Nashville, Tennessee DMA, specifically Adairville, Allen County, Auburn, incorporated Franklin, unincorporated Franklin, Lewisburg, incorporated Russellville, unincorporated Russellville, and Scottsville, Kentucky (the “cable communities”). Tele-Media filed an opposition to which Christian TV replied. For the reasons discussed below, we grant the complaint for must carry status in the cable communities.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“Must Carry Order”), commercial television broadcast stations such as WJAL are entitled to assert mandatory carriage rights on cable systems located within the station’s market.¹ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.² The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹ 8 FCC Rcd 2965, 2976-2977 (1993).

² Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. (continued...)

3. Section 614 of the Communications Act and the Commission's rules also provide that a commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.³

4. With regard to channel positioning rights, Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Communications Act and the Commission's rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁴

III. DISCUSSION

5. In support of its Complaint, Christian TV states that its television station, WHTN, is licensed to Murfreesboro, Tennessee, which is in the Nashville, Tennessee DMA. It further states that Tele-Media operates cable television systems in the cable communities, which are also in the Nashville DMA. Christian TV contends that because WHTN is located within the same DMA as these cable systems, WHTN is entitled to mandatory carriage on the cable systems. Christian TV asserts that in August 2002, it formally requested that Tele-Media commence carriage of WHTN's signal on its cable systems in the cable communities, and that Tele-Media responded regarding the Scottsville system that WHTN failed to provide an adequate signal, and did not reply regarding the other cable communities.⁵

6. In its opposition, Tele-Media explains that it sold its Scottsville cable television system, which serves Scottsville and Allen County, on December 22, 2002, and suggests that Christian TV submit its must carry request to the new owners. Further, that its cable system serving Franklin began carrying WHTN on December 31, 2002, and, therefore, Christian TV's complaint is moot regarding this system. Tele-Media also argues that Christian TV's complaint is premature regarding its Russellville system, which serves Russellville, Auburn, and Logan County (Lewisburg and unincorporated Russellville); and its Adairville system, which serves Adairville. With regard to the Russellville system, Tele-Media claims that Christian TV's complaint is premature because it failed to elect a channel position on the cable system, and to notify the cable system that it was not meeting its must carry obligation before Christian TV filed its complaint. Tele-Media also claims that Christian TV's complaint concerning the Adairville system is premature because it "did not make a must carry election and has not sent any correspondence requesting carriage for the Adairville System."⁶ Finally, Tele-Media states that WHTN does not provide

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§ 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

³ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁴ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

⁵ Complaint at 1-2.

⁶ Opposition at 2-4.

a signal of adequate strength to the Scottsville and Russellville cable systems and includes signal strength tests to support its position.⁷

7. In its reply, Christian TV argues that Tele-Media failed to provide evidence that it had sold its Scottsville system, and if this sale had occurred, the must carry request that it submitted to Tele-Media should apply to the new owners of the system.⁸ Concerning its failure to elect a channel position, Christian TV states “If a station does not elect a channel position, it has only waived its channel position rights, not its carriage rights. Absent the channel election here, Tele-Media should have commenced carriage of WHTN on the channel of its [Tele-Media] choice.”⁹ Christian TV also denies that it was required to notify Tele-Media that it was not meeting its must carry obligations before filing its complaint, and argues that its right to file a complaint was triggered by Tele-Media’s denial of carriage or failure to respond to its requests for carriage on the cable systems.¹⁰ With regard to the Adairville system and its failure to explicitly elect must carry on this system, Christian TV indicates that it is not required to send an election letter to each entity with a headend, and that in its letters to Tele-Media it specified that its election pertained to “your cable systems” and that “[t]his covers the greater Nashville DMA and all counties included in the 2001-2002 Nielsen Designated Market Area.”¹¹ Moreover, even if it had made no election, it would by default have must carry status. Concerning the issue of its signal strength, Christian TV argues that Tele-Media’s tests at the Scottsville and Russellville cable systems did not comply with good engineering practices, and it cited a number of alleged deficiencies. Further, Christian TV asserts that Tele-Media failed to conduct a test for the Adairville system, and, therefore, according to Christian TV, Tele-Media does not contest the quality of the signal that WHTN provides to this cable system.¹² Finally, Christian TV states that based on “Tele-Media’s statement... that it has now commenced carriage of WHTN on its system serving Franklin..., the Bureau no longer needs to address carriage of WHTN on that system as part of this complaint.”¹³

8. We find that WHTN is entitled to must carry status on Tele-Media’s Scottsville, Russellville and Adairville cable systems serving the cable communities. With regard to procedural issues, the Commission’s must carry rules require television stations to follow a two step notification process. Section 76.64(f) provides that stations notify cable systems that they are electing retransmission consent or must carry status.¹⁴ If a station believes that a cable operator is not meeting its carriage obligations under this section, Section 76.61(a) provides that the station notify the cable operator of its alleged failure.¹⁵ Christian TV’s August letters to Tele-Media were clearly notices of must carry election as the letters cited Section 76.64(f) of the rules. The record does not reflect that Christian TV subsequently notified Tele-Media under Section 76.61(a). However, because the parties have filed responsive

⁷ *Id.* at 4-5 and Exhibit C.

⁸ Reply at 9

⁹ *Id.* at 3.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 7.

¹² *Id.* at 4-8.

¹³ *Id.* at 1 n.1.

¹⁴ 47 C.F.R. § 76.64(f).

¹⁵ 47 C.F.R. § 76.61(a).

pleadings in this proceeding, we see no public interest reason to dismiss Christian TV's complaint, and will accept it to assess its must carry rights.¹⁶

9. Tele-Media presented evidence in a letter to the Commission dated March 24, 2003, that it had transferred ownership of its Scottsville system to North Central Communications on December 22, 2002, and the Commission's computer data base (the COALS system) of cable systems reflects this change in ownership. When a change of ownership of a cable system occurs, the new owner assumes the prior owner's must carry obligations.¹⁷

10. Under the Commission's rules, cable operators have the burden of establishing that a commercial television station located in the same DMA as a cable system is not entitled to carriage. If a cable operator claims that a station failed to deliver a signal of adequate strength, the allegation must be supported by signal strength tests that comply with good engineering practices. A review of the signal strength tests conducted by Tele-Media regarding the reception of WHTN's signal at the Scottsville and Russellville cable systems indicates that the tests did not comply with good engineering practices. For example, both tests failed to provide information regarding the make and model number of the signal meter, calibration dates, and antenna data such as orientation and radiation pattern.¹⁸ In addition, no tests were provided for the Adairville system. As a result, we cannot conclude that Tele-Media has established that WHTN fails to achieve the minimum signal strength criterion established by the Commission.¹⁹ Further, the Commission's rules allow commercial television stations to provide, at their own expense, whatever equipment is necessary to ensure delivery of a good quality signal to a cable system's principal headend.²⁰ We note that Christian TV stated in a December 10, 2002, letter to Tele-Media, in response to Tele-Media's claim that an adequate signal was not provided to the Scottsville system, "we neither challenge nor accept your assertion about the signal quality issue (until we receive the test results...). In any event, ... we are contemplating additional steps to provide an even better signal ..., if necessary."²¹

11. With regard to the Adairville cable system, and the assignment of a television station to a channel on a cable system, the Commission's rules require television stations to elect either must carry or retransmission consent status at three year intervals. The last election had to be made by October 1, 2002, and became effective January 1, 2003. If a television station failed to make a valid election, it is considered to have must carry status by default.²² Christian TV, therefore, qualifies for must carry status on Tele-Media's Adairville cable system. Christian TV, moreover, sent letters to the Scottsville and Russellville systems electing must carry, but failed to elect a channel position. The Commission's rules provide in "default" situations, a cable operator shall carry the television station on: (1) the channel number on which the station is broadcast over the air; (2) that cable channel number on which it was

¹⁶ *Rancho Palos Perdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, DA03-1154 (MB rel. April 16, 2003).

¹⁷ *Univision Partnership of New Jersey v. Comcast Cablevision of Danbury, Inc.*, 17 FCC Rcd 16837, 16839 (MB 2002), *on reconsideration, vacated in part regarding channel position, otherwise affirmed*, 17 FCC Rcd 18327 (MB 2002); *Complaint of San Jose Licensee, Inc. v. Viacom Cable*, 11 FCC Rcd 2954, 2955 (CSB 1996).

¹⁸ *Must Carry Order*, 8 FCC Rcd 2965, 2990-2991 (1993); 47 C.F.R. § 76.61(a)(2).

¹⁹ For UHF stations such as WHTN, the minimum strength criterion is -45 dBm. 47 C.F.R. § 76.55(c)(3).

²⁰ *Id.*

²¹ Complaint at Exhibit C.

²² 47 C.F.R. § 76.64(f).

carried by the cable system on July 19, 1985; or (3) the cable channel number on which the station was carried on January 1, 1992. If these cable channel numbers are not available because they are occupied by must carry television stations, the cable operator may place the television station on any channel in the basic service tier.²³ These cable channel assignment options apply to the Adairville, Scottsville and Russellville cable systems.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(d)(3), that the must carry complaint filed by Christian TV, licensee of television broadcast station WHTN, Murfreesboro, Tennessee against Tele-Media **IS GRANTED**.

13. Tele-Media **IS ORDERED** to commence carriage of WHTN on the Russellville and Adairville cable systems within sixty (60) days of the release of this *Order*. WHTN shall be carried on the channels of the cable systems as specified by Section 76.57(f) of the Commission's rules.²⁴

14. **IT IS FURTHER ORDERED** that North Central Communications shall commence carriage of WHTN on the Scottsville cable system within sixty (60) days of the release of this *Order*. WHTN shall be carried on the channel of the cable system as specified by section 76.57(f) of the Commission's rules.²⁵

15. This action is taken under authority delegated by Section 0.283 of the Commission's rules.²⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

²³ 47 C.F.R. § 76.57(f).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 C.F.R. §0.283.